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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,892	09/15/2003	Frank G. Cavazos		8527

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EXAMINER

SINGH, SUNIL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p>Office Action Summary</p>	Application No.	Applicant(s)	
	10/661,892	CAVAZOS, FRANK G.	
	Examiner	Art Unit	
	Sunil Singh	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The "Flammability Test" is critical or essential to the practice of the invention, but details of such test are not provided in the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-10 are indefinite because one cannot determine the metes and bounds of the claims since they all recite "able to pass an established fire protective test". What is "an established fire protective test", is that a test established by ASTM, OSHA, Consumer Guide etc.

Claim 11 is indefinite since the standard according to the "Flammability Buildings" can change thus making the metes and bounds of the claim not discernable.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1 and 8-10 are rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Bost et al. (US 4463464).

Bost et al. discloses a mattress having a fire retarding construction (see abstract, col. 3 line 40+, therefore it inherently passes a fire protective test), comprising barrier means (L,18,52) to restrict entry of oxygen into the interior portions of said mattress (see col. 4 line 5+). The barrier means is releasable (see col. 5 line 50+) and extends around the periphery of the mattress (see Fig. 8).

With regards to claims 8-10 see col. 3 lines 25-50, specifically rope W1, W2 are covered by mattress fabric C.

7. Claim 1 is rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Glackin (US 4866799).

Glackin discloses a mattress having a fire retarding construction (see abstract, (2), (4), (6), therefore it inherently passes a fire protective test), comprising barrier means (2,4,9)

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to restrict entry of oxygen into the interior portions of said mattress (this is true because by being fire retarding would mean it inherently restrict oxygen). The barrier means is releasable (glue (5) for member (2) and member (9) by sewing) and extends around the periphery of the mattress (see Figs. 1,2,5).

8. Claim 1 is rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Weingartner et al. (US 5632053).

Weingartner et al. discloses a mattress having a fire retarding construction (see abstract, col. 10 line 30+, therefore it inherently passes a fire protective test), comprising barrier means (36) to restrict entry of oxygen into the interior portions of said mattress (this is true because by being fire retarding would mean it inherently restrict oxygen). The barrier means is releasable (43) and extends around the periphery of the mattress (see Fig. 7).

9. Claims 1 and 11 are rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Diaz (US 6718583).

Diaz discloses a mattress having a fire retarding construction (see abstract, col. 3 line 60 thru col. 5 line 10, passes a fire protective test), comprising barrier means (16) to restrict entry of oxygen into the interior portions of said mattress (this is true because by being fire retarding would mean it inherently restrict oxygen). The barrier means is releasable (18) and extends around the periphery of the mattress (see col. 3 line 60+).

10. Claim 1 is rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Mortensen et al. (US 6609261).

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Mortensen et al. discloses a mattress having a fire retarding construction (see abstract, col. 4 line 5+, passes a fire protective test), comprising barrier means (16) to restrict entry of oxygen into the interior portions of said mattress (this is true because by being fire retarding would mean it inherently restrict oxygen). The barrier means is releasable (17) and extends around the periphery of the mattress (see Figs. 1,2).

11. Claims 1-3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Suekoff or Karpen or Penner et al. (US 1755714, 4430765, 1892679).

Insofar applicant's construction of having a top cover with welts on its side and a bottom cover with welts on its side, adjacent welts of the sidewall (barrier means) creates a fire retarding construction by having the barrier means restrict entry of oxygen thus passing a fire protective test, then the following references anticipate the claims since they have the same construction:

Suekoff, Karpen and Penner et al. disclose the mattress called for in claims 1-3, in particular the facing welts (8,15, see Fig. 4) and (18,19) and (see Fig. 5) respectively. The barrier means is releasable (stitching 16, 21 and see Fig. 5 respectively) and extends around the periphery of the mattress (see Figs. 1,1,1 respectively).

12. Claims 1-3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Richards, Jr. (US 3818520).

Richards Jr., discloses a mattress having a fire retarding construction (see abstract, col. 1 lines 1-5, passes a fire protective test, see col. 2 line 45+ thru col. 4 line 55),

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comprising barrier means (11,12) to restrict entry of oxygen into the interior portions of said mattress (see col. 2 line 60+). The barrier means is releasable (see col. 3 line 60+) and extends around the periphery of the mattress (see Fig. 1). The facing welts (see Fig. 7).

With regards to claim 11, insofar applicant's construction of having a top cover with welts on its side and a bottom cover with welts on its side, adjacent welts of the sidewall (barrier means) creates a fire retarding construction by having the barrier means restrict entry of oxygen thus passing a fire protective test, then Richards, Jr. anticipate claim 11 since it has the same construction.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suekoff or Karpen or Richards, Jr. or Penner et al. in view of Strell (US 5432964). Suekoff, Karpen, Richards, Jr. and Penner et al. all disclose the invention substantially as claimed. However, they all lack releasable fastening members for connecting the welt members. Strell teaches releasable fastening members (15,16) for connecting members forming a corner. It would have been considered obvious to one of ordinary skill in the art to modify either Suekoff or Karpen or Richards, Jr. or Penner et al. by

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substituting the releasable fastening member as taught by Strell for the fastening member (14) (21) (see col. 3 line 60+) (Fig. 5) as disclosed by Suekoff, Karpen, Richards, Jr. and Penner et al. respectively since this would reduce workmanship when constructing the mattress.

Response to Arguments

15. Applicant's arguments filed 10/19/04 have been fully considered but they are not persuasive. Applicant states that claim 1 has been amended to include the limitation "able to pass a specific fire protective test", specifically one that has been established and is in existence which is supported by the description of this invention in the specification. Furthermore, applicant states that claim 1 has been amended to define the barrier means extends around the entire periphery of the mattress. That being said applicant argues Bost et al. does not disclose that his construction has passed or would be able to pass **any** established fire prevention test. It should be noted that Bost et al. does not explicitly list or state a particular fire prevention test that it passed. However, the mere fact that Bost et al. structure is fire retarding it inherently passes a fire protective test since an established fire protective test can be established by ASTM, OSHA, Consumer Guide or even little Bobby for his science fair project.

To avoid a lengthy office action examiner's response to arguments made against Glackin and Weingartner et al. are similar to that stated above with regards to Bost et al.

Applicant argues that Diaz reference does not disclose that his mattress construction was able to pass the established fire prevention test. This is not concurred with. Applicant is directed to col. 3 line 60 thru col. 5 line 10 wherein it explicitly talks

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about passing the established fire prevention test. Applicant argues that the barrier means of Diaz is not releasable. This is not concurred with. The barrier means (16) of Diaz is releasable (18).

With regards to Mortensen et al. applicant argues that it passes a different fire prevention test. The examiner is totally confused since applicant claim calls for "an established fire prevention test" and Mortensen et al. passes an established fire prevention test as acknowledged by applicant. Applicant argues that the barrier means of Mortensen et al. is not separable. This is not concurred with. The barrier means (16) of Mortensen et al. is separable (17).

Applicant argues that Suekoff does not refer to fire prevention or fire retarding at all. The examiner agrees Suekoff is silent about fire prevention or fire retarding. However, insofar applicant's construction of having a top cover with welts on its side and a bottom cover with welts on its side, adjacent welts of the sidewall (barrier means) creates a fire retarding construction by having the barrier means restrict entry of oxygen thus passing a fire protective test, then Suekoff anticipates the claims since it has the same construction.

Applicant argues that Karpen and Richards Jr. do not teach fire retardant construction. The examiner disagrees. Since applicant's construction of having a top cover with welts on its side and a bottom cover with welts on its side, adjacent welts of the sidewall (barrier means) creates a fire retarding construction by having the barrier means restrict entry of oxygen thus passing a fire protective test, then Karpen and Richards Jr. both anticipate the claims since they have the same construction.

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Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

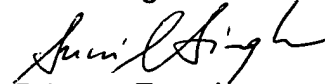
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh



Primary Examiner
Art Unit 3673

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1/21/05